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REGD. GOA - 5

Panaji, 22nd March, 2001 (Chaitra 1, 1923) SERIES II No. 51

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

—

Order

No. CL/Pub-Awards/98/458

The following Award dated 10-12-98 in Reference No. IT/52/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 27th January, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/52/94

Workman
Rep. by the Secretary,
Goa Trade and Commercial Workers Union,
Velho Building,
Panaji-Goa. — Workman/Party I

V/s

M/s Archana Industries,
Bethora Industrial Estate,
Bethora, Ponda Goa. — Employer/Party II

Workman/Party I represented by Adv. Suhas Naik.

Employer/Party II represented by Adv. Shri B. G. Kamat.

Dated:-10-12-98.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. 28-11-94-LAB dated 25-4-1994 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the Management of M/s Archana Industries, Bethora, Ponda Goa, in terminating the services of Miss Asheeta S. Borkar, Helper, w.e.f. 10-11-92 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/52/94 and registered AD notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (For short "Workman") filed her Statement of Claim which is at Exb. 3. The facts of the case in brief as pleaded by the workman are that the Employer/Party II (For short "Employer") is having its factory situated at Bethora Industrial Estate, Bethora, Ponda Goa, and she was employed with the Employer as a Helper and she worked for more than 240 days prior to the date of refusal of employment to her. That on 10-11-92, the employer suddenly refused employment to her and obtained her signature on two Blank papers. That, she approached the Goa Trade and Commercial Workers Union and the Secretary of the said union sent a letter dated 13-11-92 to the employer bringing to their notice the above fact. That the employer acknowledged the receipt of the said letter on the same day and put a remark asking the workman to resume duties from 1-12-92 and further agreed to pay all the backwages to her. That accordingly, the workman reported for the work on 1-12-92, but she was not allowed to do so. That on being informed, the union raised an Industrial Dispute before the Labour Commissioner by letter dated 5-12-92 and the Copy of the said letter was sent to the employer for information. That the employer did not attend the meetings fixed by the Office of the Labour Commissioner and a failure report was submitted to the Government by the Conciliation Officer vide letter dated 11-2-94. The workman contended that the employer did not comply with the provisions of

industrial law before terminating her services and therefore, the action of the employer in terminating her services is illegal and unjustified. The workman therefore, prayed that the employer be directed to reinstate her in service with full back wages and continuity in service.

3. The Employer filed Written Statement which is at Exb. 4. The employer stated that the workman was engaged as a Helper in un-skilled category since June/87 till 9-11-92 on which date, the workman orally informed the employer that she was resigning from service for better prospects. The employer stated that the workman requested that she be relieved forthwith on settlement of her legal dues and issuance of a service certificate. The employer stated that the workman was paid her dues on 9-11-92 itself and she was asked to collect the service certificate on 10-11-92 which she did. The employer stated that there was no union of workers of the employer nor any of the workers were affiliated to any trade union. The employer stated that on 20-11-92, some outside workers who were the members of the Goa Trade and Commercial Workers Union suddenly entered the establishment of the employer and handed over to the employer a letter dated 13-11-92 purporting to have been signed by the Secretary of the said Union wherein, false allegations were made that employment was refused to the workman from 10-11-92 and her signature was obtained on the vouchers etc. The employer stated that the said workers threatened the Proprietor of the employer with dire consequences if the workman was not taken back in service and that looking at the mood of the workers and on account of apprehending physical assault, the the Proprietor of the employer was compelled out of fear to give in writing that the workman can join the work from 1-12-92. The employer stated that the said writing was obtained by use of force and threats by the said outside workers. The employer stated that the workman came to the establishment on 1-12-92 and she was told that she should join as a fresh employee, which she refused to accept and left the establishment. The employer denied that no dispute existed between the workman and employer as regards the termination of services of the workman from 10-11-92 and stated that the present dispute is a creation of the said union. The employer denied that the workman was refused employment from 10-11-92 or that the Signatures of the workman was obtained on any blank papers forcibly. The employer denied that the services of the workman were terminated or that the employer had to comply with any provisions of industrial law or that the workman is entitled to any reliefs as claimed. The workman thereafter, filed Rejoinder which is at Exb.5.

4. On the pleadings of the parties, issues were framed at Exb.7 and evidence of the workman was recorded. When the case was fixed for the cross examination of the employer's witness, on 10-12-98, the parties submitted that the dispute between them was amicably settled and they filed terms of settlement dated 10-12-98 Exb.12. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the said settlement which are duly signed by the workman and the employer and also by the Secretary of the Union on behalf of the workman and Adv. Shri B. G. Kamat on behalf of the employer. I am satisfied that the terms of the settlement are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the Consent Award in terms of the settlement dated 10-12-98 Exb.12.

ORDER

1. The workman Miss Asheeta S. Borkar-Helper and their representative Union agree that termination of her service by the management of M/s Archana Industries, Bethora Industrial Estate, Bethora, Ponda Goa, with effect from 10-11-92 is legal and justified.

2. In consideration of the above, management of M/s Archana Industries hereby pays an amount of Rs. 7,000 (Rupees seven thousand only) by bearer cheque No. 342769 dated 10-12-98 on State Bank of India, Ponda Goa, to Miss Asheeta S. Borkar who has received the same in settlement of all her demands, claims including claim for statutory compensation, notice pay and gratuity etc.

No order as to cost.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/154

The following Award dated 27-11-1998 in Reference No. IT/50/98 given by the Industrial Tribunal, Panaji Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 8th January, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/50/98

Kum. Bharati R. Harmalkar
Mazalwada, Anjuna,
Bardez - Goa. — Workman/Party I

V/s

M/s Nilima Twines and Ropes
Pvt. Ltd.,
Thivim Industrial Estate,
Karaswada-Bardez, Goa. — Employer/Party II

Workman/Party I represented by Shri Subhas Naik.

Employer/Party II ex-parte.

Panaji, dated: 27-11-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act 1947 the Government of Goa by order dated 24th June 1998 bearing No. IRM/CON/MAP/(78)/97-98/9403 referred the following dispute for adjudication by this Tribunal.

(1) "Whether the action of the management of M/s Nilima Twines and Ropes Pvt. Ltd., Thivim Industrial Estate, Karaswada, Bardez Goa, in terminating the services of Kum. Bharati R. Harmalkar, helper, with effect from 16-6-1997, is legal and justified?

(2) If not to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/50/98 and registered A/D notice was issued to the parties who were duly served with the said notice. In pursuance to the said notice the workman/party I (for short, "workman") appeared and was represented by Shri Subhas Naik. The employer/party II (for short, "employer") though duly served with the notice did not appear and hence the case was proceeded exparte against the employer on 21-9-98.

3. The workman filed statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that the employer is having its factory situated at Tivim Industrial Estate, Karaswada, Tivim, Bardez, Goa wherein fishing nets and nylon ropes and twines are manufactured. That she was employed by the employer since 28-8-93 on salary of Rs. 996/- per month and she worked continuously till the date of termination of her service. That on 14-6-97 when she reported for work she was orally informed that her services stood terminated from 16-6-97 and that from that day she should not report for work. That at the time of termination of her service no reasons for her termination were given, nor she was given one month's notice, nor she was paid any retrenchment compensation. The workman contended that termination of her service is in violation of sec. 25F and 25G of the Industrial Disputes Act, 1947. She also contended that the employer violated the provisions of sec. 25 H of the I. D. Act 1947 as new workers were employed in her place but she was not re-employed. That she raised an industrial dispute vide letter dated 27-6-97 and conciliation proceedings were held by the Asst. Labour Commissioner, Mapusa, Goa, but the employer did not participate in the said proceedings. That the conciliation proceedings ended in a failure and hence the Government made present reference. The workman contended that since termination of her service is illegal and unjustified she is entitled to reinstatement in service with full back wages.

4. The present case was proceeded ex-parte against the employer on 21-9-98 as inspite of the opportunities given, none appeared on its behalf. Consequently ex-parte evidence of the workman was recorded. The workman examined only herself and her evidence is on record. in her deposition she has stated that she was employed with the employer as an Operator since August 1993 and that the employer is having its factory at Tivim Industrial, estate, Tivim wherein fishing nets, nylon ropes and twines are manufactured. She has stated that on 14-6-97 she reported for work as usual and at that time her wages were paid and she was told that her services stood terminated from 16-6-97 and that she was not given any reasons for terminating her services. She has stated that on 16-6-97 she reported for work but she was not allowed to resume duties. She has stated that at the time when her services were terminated she was not given one month's notice nor she was paid any retrenchment compensation. She has stated that she worked continuously from the date of her appointment till the date of termination of her service and that her last drawn salary was Rs. 996/- p.m. She has produced the letter dated 27-6-97 Exb. W-1 whereby she raised the dispute as regards termination of her services. She has stated that the employer did not participate in the conciliation proceedings held by the Asst. Labour Commissioner and hence the proceedings ended in failure. She has claimed that she is entitled for reinstatement in service with full back wages.

5. The deposition of the workman has gone unchallenged as the case has proceeded ex-parte against the employer. The employer was given opportunities to contest the proceedings. But the employer chose to remain absent and allowed the case to proceed ex-parte. I have no reason to disbelieve the statement of the workman which is made on oath. The workman has stated that the termination of her service is illegal because she was not given one month's notice or notice pay nor she was paid retrenchment compensation. " Retrenchment' is defined in sec. 2(00) of the I. D. Act, 1947. As per the said section retrenchment means termination of service of a workman otherwise than as a punishment inflicted by way of disciplinary action. The services of the workman were terminated without giving any reasons. It was not as a matter of punishment inflicted by way of disciplinary action. Her case also does not fall within the exceptions laid down under sec. 2(00) of the Industrial Disputes Act, 1947, which are (a) voluntary retirement of the workman or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein or (c) termination of the service of a workman on the ground of continued illhealth. Therefore the termination of the service of the workman Bharat R. Harmalkar amounts to retrenchment.

6. Sec. 25F of the Industrial Disputes Act, 1947 lays down the procedure to be followed by the employer for retrenching the services of a workman. As per the said provision the services of a workman who is in continuous service for not less than one year cannot be retrenched

unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec. 25 B(2) of the Industrial Disputes Act, 1947 defines "Continuous service". As per the said provision a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in case of a workman employed below ground in a mine and 240 days in any other case. In the present case the workman obviously was not employed below ground in a mine as she was employed in the factory of the employer. The workman has stated in her deposition that she was employed as an operator from 14-10-93 and that she has worked continuously till her services were terminated on 16-10-97. There is no challenge to this statement of the workman. There is no evidence contrary to the statement made by the workman and I find no reason to disbelieve her statement which is made on oath. It is therefore established that the workman worked with the employer for more than 240 days prior to 16-10-97 and hence the provisions of sec. 25 F of the Industrial Disputes Act, 1947 became applicable to her. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd. v/s Industrial Tribunal, Hariyana and others reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in sec. 25F renders the order of retrenchment invalid and inoperative. In the present case the workman has stated that she was not given one month's notice or notice pay nor she was paid retrenchment compensation. There is no contrary evidence to this. Therefore, there is no compliance of sec. 25F of the Industrial Disputes Act, 1947 from the employer. In the circumstances, I hold that the termination of the services of the workman by the employer w.e.f. 16-10-97 is illegal and unjustified.

7. Once it is held that the termination is illegal, the next question for consideration is what relief should be granted to the workman. The ordinary rule is that the workman is entitled for reinstatement with full back wages, unless there are reasons which do not warranty reinstatement or full back wages. In the present case I do not find any reason to deviate from this normal rule. The workman has stated that she is unemployed. There is no evidence to the contrary. The Supreme Court in the case of State Bank of India v/s Sundera Money reported in AIR 1976 SC 1111 has held that reinstatement is the necessary relief in case of violation of the provisions of sec. 25 F of the I. D. Act 1947. In the present case the services of the workman were terminated in violation of the provisions of sec. 25 F of the Industrial Disputes Act, 1947. There is no evidence that the workman is gainfully employed. I, therefore hold that the workman is entitled to reinstatement in service with full back wages and other consequential benefits.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Nilima Twines and Ropes Private Limited, Thivim Industrial Estate, Karaswada, Bardez, Goa, in terminating the services of the workman Kum. Bharati R. Harmalkar, w.e.f., 16-6-1997 is illegal and unjustified. Kum. Bharati R. Harmalkar is ordered to be reinstated in service with full back wages and other consequential benefits.

No order as to costs.

Inform the Government accordingly.

Sd./-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/155

The following Awards dated 20-11-1998 in Reference No. IT/51/95 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Dated: 8th June, 99.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No.IT/51/95

Workmen rep. by
Cidade de Goa Hotel Employees Union,
Dona Paula-Goa. ... Workmen/Party I

V/s

M/s Forento Resorts & Hotels Ltd.,
Cidade De Goa,
Dona Paula-Goa. ... Employer/Party II

Workmen represented by Shri V. Sawant.

Employer represented by Adv. Shri G. K. Sardessai.

Panaji, dated: 20-11-1998

AWARD

In exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947) the Government of Goa by order dated 7-9-95 bearing No.28/30/95-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the demand of the workmen represented by Cidade de Goa Hotel Employees Union, for 20% bonus and 10% ex-gratia for the accounting year 1991-92 is legal and justified?

If not,to what relief the workmen are entitled ?"

2. On receipt of the reference a case was registered under No. IT/51/95 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workmen-Party I (for short, "Union") filed the statement of claim which is at Exb.3. The facts of the case in brief are that the union namely Cidade de Goa Hotel Employees Union is the sole representative union of all the workmen employed with the Employer-Party II (for short, "Employer") that the employer paid to the workmen 8.33% minimum annual bonus under the Payment of Bonus Act, 1965 for the accounting year 1992-93. That the union had demanded 20%maximum annual bonus as well as 20% ex-gratia payment. The union contended that the employer had highly successful and encouraging financial results and gross profits for the accounting year 1992-93. The Union therefore claim that the workers are entitled to 20% maximum bonus under the Payment of Bonus Act as well as 20% ex-gratia payment.

3. The employer filed written statement which is at Exb.4. By way of preliminary objection the employer stated that the workers have accepted 8.33% bonus for the accounting year 1992-93 and therefore the dispute does not survive. The employer also stated that this demand for bonus has not been espoused by a substantial number of workmen so as to be called a collective dispute and therefore there is no industrial dispute and the reference is liable to be rejected. The employer stated that the union has no right to raise the dispute as it does not represent the majority of the workmen nor a substantial section. The employer denied that the union is the sole representative union of all the workmen as claimed by the union. The employer stated that all the workmen who were entitled to Bonus under the Payment of Bonus Act, 1965 were paid 8.33% bonus by the employer for the accounting year 1992-93 as payable under the Act and the workmen have accepted the payment in full and final settlement of their claim for bonus for the accounting year ending on 31-3-1993 and thus there is no dispute. The employer denied that they had a highly successful and encouraging financial season and made gross profits for the accounting year 1992-93. The employer stated that for the purpose of calculations of profit based bonus under the Payment of Bouns Act, the allocable surplus is the key factor and the same has to be determined as per the schedule to the payment of bonus act and the profitability if any. The employer stated that they made a loss of 211.80 lakhs as indicated in the profit and loss account. The employer stated that they have strictly complied with the methodology of calculation under the Payment of Bonus Act and there being no allocable surplus whatsoever the employer has rightly paid the statutory bonus of 8.33%. The employer therefore stated that the union is not entitled to any relief as claimed and the reference is liable to be rejected. The Union thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties following issues are framed at Exb.6.

1. Whether the Union/Party I proves that it is the sole representative union of the workmen employed with the Party II ?

2. Whether the Union/Party I proves that its demand for 20% bonus for the accounting year 1991-92 is legal and justified ?

3. Whether the Union/Party I proves that its demand for 20% ex-gratia payment for the accounting year 1991-92 is legal and justified ?

4. Whether the Employer/Party II proves that the reference is not maintainable for the reasons stated in para.'A' of the written statement ?

5. Whether the Union/Party I is entitled to any relief ?

6. What Award ?

5. My findings on the issues are as follows:

Issue No. 1: In the negative
Issue No. 2: In the negative
Issue No. 3: In the negative
Issue No. 4: In the negative
Issue No. 5: In the negative
Issue No. 6: As per order below

REASONS

6. *Issue No. 1:* It was the contention of the Union that it is the sole representative union of the workmen employed with the employer. This contention of the union was denied by the employer. Therefore the burden was on the Union to prove that it is the sole representative union of the workmen of the employer. The union was given several opportunities to lead evidence in the matter. However, the union, did not lead any evidence. In the absence of any evidence from the union it cannot be held that it is the sole representative union of the workmen of the employer. I therefore hold that the union has failed to prove that it is the sole representative union of the workmen employed with the employer. In the circumstances I answer the issue no. 1 in the negative.

7. *Issue No.* 2: The contention of the union is that it had demanded 20% bonus for the accounting year

1991-92 but the employer paid only 8.33% under the payment of Bonus Act, 1965. The contention of the Union is that the employer had highly successful and absolutely encouraging financial results and gross profits. The Bombay High Court in the case of V.N.S. Engineering Services V/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol.71 at page 393 has held that he who approaches a court for a relief should prove his case and he who does not lead evidence must fail. The High Court has Court has further held that the party who raises industrial dispute is bound to prove the contention raised by him and the Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In the present case it is the union who raised the industrial dispute by making the demand for 20% bonus for the accounting year 1991-92. The reference of the dispute to this Tribunal has been made by the Government at the instance of the union, and thus it is the union who has approached this Tribunal for the necessary relief. Therefore the burden was on the union to prove that the workmen are entitled to 20% bonus for the accounting year 1991-92. The records show that the union was given several opportunities to lead evidence in the matter. However, no evidence whatsoever was led on behalf of the union. The employer also did not lead any evidence in the matter. This being the case there is no material before me to hold that the demand of the union for 20% bonus to the workmen of the employer for the accounting year 1991-92 is legal and justified. I, therefore hold that the union has failed to prove that its demand for 20% bonus for the accounting year 1991-92 is legal and justified. Hence, I answer the issue No.2 in the negative.

8. Issue No. 3: This issue pertains to the claim of the Union for 20% exgratia payment to the workmen for the accounting year 1991-92. This issue was framed because such a claim was made by the union in the statement of claim filed by it. In my view the question of considering this demand of the union does not arise because no reference has been made by the Government of this demand of the union in the order of reference. The Government has made the reference of the dispute only as regards the demand of the union for 10% exgratia payment for the accounting year 1991-92. It is well settled that the Tribunal cannot travel beyond the terms of the reference. Besides, the union has not led any evidence in this case to show that the workmen are entitled to any exgratia payment. In the absence of any evidence from the Union it cannot be held that the demand of the union for exgratia payment is legal and justified. This being the case I hold that the demand of the union for 20% exgratia payment is not legal and justified. Hence, I answer the issue No. 3 in the negative.

9. Issue No. 4: In the written statement the employer had challenged the maintainability of the reference on various grounds The grounds were set up in para. "A" of the written statement. Since it was the case of the employer that the reference is not maintainable, the burden was on the employer to prove the same. However, the employer did not lead any evidence in the matter. Consequently the employer has failed to prove that the reference is not maintainable. I, therefore answer the issue No. 4 in the negative.

10. *Issue No. 5:* This issue pertains to the relief to be granted to the Union/Workmen. Since it has been held by me that the demand of the Union for 20% bonus and 20% exgratia payment is not legal and justified, the question of granting any relief to the Union or the workmen does not arise. I, therefore hold that the union/workmen are not entitled to any relief and answer the issue in the negative.

In the circumstances I pass the following order.

Order

It is hereby held that the demand of the workmen represented by the Goa Hotel Employees Union for 20% bonus and 10% exgratia for the accounting year 1991-92 is illegal and unjustified. It is hereby further held that the workmen are not entitled to any relief.

No order as to cost.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/158

The following Awards dated 8-9-1998 in reference No. IT/29/91 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 8th January, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT /29/91

Workmen
ACGL Workers Union ... Workman/Party I

V/s

M/s Automobile Corporation
of Goa Ltd., ... Employer/Party II
Honda-Sattari, Goa.

Union/Party I represented by Shri Subhas Naik.

Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Panaji, 8th September, 1998

AWARD

In exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by its order dated 28-6-91 bearing No. 28/38/87-LAB referred the following dispute for ajudication by this Tribunal.

"Whether the action of the management of M/s. Automobile Corporation of Goa Ltd., in terminating the services of the following workmen with effect from 21-1-86 is legal and justified?"

(1) Mr. S. N. Vengurlekar
(2) Mr. V. A. Gawas
(3) Mr. O. A. Barve
(4) Mr. P. J. Naik
(5) Mr. Anthony Monteiro
(6) Mr. D. S. Parsekar
(7) Mr. Marshall Fernandes
(8) Mr. Arvind A. Prabhudesai
(9) Mr. G. G. Gawas
(10) Mr. R. W. Naik
(11) Mr. D. V. Naik
(12) Mr. S. V. Desai
(13) Mr. B. A. Massordekar
(14) Mr. B. M. Desai
(15) Mr. D. L. Gaonkar
(16) Mr. Pradeep Dhargalkar

If not, to what relief the workmen are entitled ?

2. On receipt of the reference a case was registered under No. IT/29/91 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Union/Party I (for short, "Union") filed the statement of claim which is at Exb.4. The facts of the case in brief as pleaded by the union are that the Employer/Party II (for short, "employer") has his factory situated at Honda, Sattari, Goa and is engaged in the business of manufacturing spare parts for various types of moter vehicles. That the workmen named in the reference (for short, "Workmen") were employed with the employer. That the workers of the employer are the members of the union i.e. the ACGL Workers Union which is registered with the Registrar of Trade Unions under the provisions of Trade Union Act, 1926. That the employer made gross profit of Rs. 150.36 lakhs for the financial year 1984-85 and therefore the Union raised a demand for 20% bonus with the employer for the said financial year. That however the employer did not agree to hold any discussion on the said demand on the ground that the workers were not entitled to any bonus. That in protest against the unjustified stand of the employer the union gave a call for one day open strike on 25th October, 1985 and as a sequel to strike call the employer suspended from service the workmen, Shri S. N. Vengurlekar, the President of the Union, Shri D. V. Naik, Shri D. L. Gaonkar, the Joint Treasurer of the Union and Shri G. G. Gawas, the office bearer of the union who are the concerned workmen in the present reference. That the employer on 5th November 1985 issued a charge sheet to the above said workmen for participating in one day strike. That though the charge sheet was issued no enquiry was held against the said workmen. That besides suspending the office bearers of the union, employer started harassing and coercing the workers and pressurising them to resign from the union. That since inspite of the intervention by the Labour Commissioner and Labour Minister the employer did not withdraw the suspension orders nor discussed the bonus issue, the workers went on strike w.e.f. 20th November 1985 which continued for several months and ultimately it was withdrawn on 12th May 1986. That during the strike period the employer terminated the services of the workmen. That after calling off strike on 12th May, 1986 all the workers resumed the duty on 12th May, 1986 except the above said workmen who were not allowed to resume work on the ground that their services were terminated w.e.f., 21st January, 1986. That on 25th August 1986 the Union wrote a letter to the employer demanding reinstatement of the workmen in service with full back wages and continuity in service. That the union brought to the notice of the employer that no charge sheet was issued to the workmen, no enquiry was held against them and neither one month's notice was given to them nor retrenchment compensation was paid to them prior to the termination of their service. That since the employer did not respond to the letter of the Union, an industrial dispute was raised before the Labour Commissioner by letter dated 15th November, 1986. That the employer filed their written statement before the Labour Commissioner and the conciliation proceedings held by the Assistant Labour Commissioner ended in a failure and he submitted his failure report dated 26th November, 1987, to the Government. That the Labour Department, Government of Goa, passed an order on 1st June, 1988 stating that the Government is agreeable to refer the dispute to the Industrial Tribunal. That thereafter the union made several representations to the Government for referring the dispute to the Industrial Tribunal but the Government refused to do so and therefore the Union filed a Writ Petition before the Bombay High Court, Panaji Bench, against the order of the Government refusing to make the reference. That when the Writ Petition was pending, the Government by order dated 28th June, 1991 referred the present dispute to this Tribunal for adjudication. That the employer filed a Writ Pettition before the High Court challenging the order of the Government, and the High Court by order dated 20th August, 1991 dismissed the said Writ Petition. The Union contended that the workmen were not involved in any incident of burning of the bus and that they had not committed any misconduct and the termination order passed against them is illegal as no enquiry was held against them nor employer complied with Sec. 25F of the I.D Act 1947. The Union contended that the termination of services of workmen is malafide, vindictive and by way of victimisation for their trade union activities. The Union contended that the action of the employer in terminating the services of workmen is illegal and unjustified and therefore they are entitled to be reinstated in service with full back wages and continuity in service.

3. The employer filed written statement which is at Exb. 5. The employer in para. 1 of the written statement

raised several grounds challenging the maintainablitiy of the reference. The employer stated that the demands raised by the Union were exfacie illegal, baseless, and not maintainable. The employer stated that by letter dated 31st August, 1985,the union demanded 20% bonus for the year 1984-85 without imposing the limits set out by the statute and the employer was called upon to disperse the bonus amount on or before 14th September, 1985. The employer stated that by the letter dated 5th September, 1985, the union was informed that it was not possible to decide such a major issue at a short notice and also that as per the provisions of payment of bonus act, the employer is not bound to pay bonus for the year 1984-85. The employer stated that inspite of the facts conveyed to the union by letter dated 5th September, 1985, the union resorted to various modes of agitation including going on strike and raising dispute before the Labour Commissioner. The employer stated that though they were not bound to pay any bonus to the workers for the year 1984-85 they offered to pay an ex-gratia at the rate of 15% of the wages which was infact acceptable to all the workers but the Government at the instance of the union referred the dispute as regards bonus for the year 1984-85 to this Tribunal being reference case No. IT/12/87 and the demand of the union was rejected by the Tribunal in terms of the provision of the payment of Bonus Act, 1965. The employer denied that the four workers/office bearers of the union were suspended as a sequel to the strike resorted to by the union as it can be seen from the charge sheet dated 6th November, 1985 that they were issued charge sheets not only for participating in one day token strike but they were charge sheeted for also indulging in various violent and illegal activities including participating and instigating the illegal strike. The employer stated that the said workmen did not participate in the enquiry on the dates fixed and in view of the termination of their service by letter dated 21-1-86, the enquiries were kept in abeyance. The employer stated that in the discussion held before the Labour Commissioner and the Labour Minister, it was pointed out that the demand of the union to withdraw suspension orders issued to the workmen was illegal and unjustified and also that the strike call given by the union was illegal and unjustified. The employer stated that the strike was ultimately withdrawn by the workers unconditionally apart from the fact that they had also given an undertaking to the employer that they were joining duties unconditionally and willingly, they will maintain total discipline and deliver normal production, they will report for duties as required by the employer including in the third shift, they will fully abide by the terms and conditions stipulated in the agreement dated 25-5-84 and in case they misbehaved or controvened any rule, the employer would be free to take suitable action against them. The employer denied that any attempt was made by them to break the strike by offering money or otherwise. The employer denied that the termination of services of workmen is illegal, unjustified, malafide or that it amounts to victimisation. The employer stated that one month's notice was given to the workmen before terminating their service, but the same was refused by the workmen. The employer denied that the workmen are entitled to any retrenchment compensation. The employer stated that the termination of services of the workmen was legal and justified in view of the facts mentioned in the written statement in respect of each of the workmen. The employer stated that the workmen were involved in the acts amounting to misconduct and in view of the involvement of the workmen in the incidents referred to in the written statement, the employer could not repose confidence in them and in the interest of harmony the employer took the decision to terminate the services of workmen. The employer denied that the termination of the services of the workmen is malafide, vindictive or by way of victimisation or that it is in violation of the principles of natural justice or is in violation of the provisions of the I. D. Act or the model standing orders. The employer stated that the workmen are not entitled to any relief as claimed by them and the reference is liable to be rejected. The union thereafter filed rejoinder which is at Exb. 6.

4. On the pleadings of the parties following preliminary issues were framed at Exb. 7.

1. Does Party No. II prove that the present reference is not maintainable for the reasons stated in para (a) to (e) of the written statement at Exb. 5 ?

2. Does Party II prove that in view of the settlement dated 17-10-87 there was no industrial dispute between the parties and hence the present reference is bad in law ?

5. My findings on the issues are as follows:

Issue No. 1: Does not aries

Issue No. 2: In the affirmative.

Reasons

6. *Issue No.* 2: This issue is taken up first as it pertains to the maintainability of reference on the ground that there was no industrial dispute. It is the contention of the employer that as on the date when the reference was made by the Government, there was no industrial dispute in view of the settlement dated 17-10-87 entered into with the employer. Before I proceed to give my findings on this issue, I shall first deal with the objection raised by Shri Subhas Naik, representing the Union that in view of the order of the Hon'ble High Court of Bombay, at Panaji dated 28th August, 1991 passed in Writ Petition No. 278/91 the employer cannot raise the issue of settlement before this Tribunal. His contention is that the employer had filed the petition in the High Court challenging the order of the Government whereby present reference was made to this Tribunal and one of the grounds on which the order was challenged was that there was no dispute in view of the settlement entered into with the employer as regards the termination of the services of the workmen involved in the present reference. His contention is that the Hon'ble High Court considered the said objection and dismissed the Writ Petition filed by the employer and

therefore the employer cannot raise the same objection again before this Tribunal. I do not agree with this contention of Shri Subhas Naik. I have gone through the said order of the Hon'ble High Court. The Hon'ble High Court has not given any given any finding on the settlement entered into with the employer. While disposing the Writ Petition the Hon'ble High Court considered the objections raised by the employer including the one that the settlements covered the issue of dismissal of the workmen. The High Court observed that in the settlements there was no specific reference to the particular issue covering the disciplinary action taken against the workmen. In para. 9 of the order the Hon'ble High Court held that, "If a settlement had been bonafide and really reached,that may be a factor which could be taken into consideration while adjudicating the issues. It is quite likely that in a given situation, the settlements could be either fraudulent or prejudicial to the interest of the labour. That would not denude the powers of the Union to agitate and even to question the validity or the bonafides of the settlement reached between the parties. The power of the Government in such circumstances to ensure that a proper adjudication even in relation to such contentions cannot be denied at all in law," This shows that the issue of settlements entered into with the employer was kept wide open so that the same could be agitated by the parties before the Tribunal. The issue whether the settlements covered the disciplinary action taken against the workmen was left to be decided by the Tribunal in the reference made by the Government after considering the evidence of the parties on the said issue. In my view therefore there is no substance in the contention of the Union that the employer cannot raise the issue of settlements before this Tribunal.

7. The Bombay High Court in the case of Iqbal Ahmed Kamruddin v/s P. L. Musunder reported in 1992 (64) PLR 827 in para 8 of its judgment has held as follows:

> "If what is referred to a tribunal/Labour Court is not an industrial dispute it is always open to a party to show to the forum that the dispute referred for adjudication through purported to be an industrial dispute, is in reality not an industrial dispute at all. This has always been recognised as an exception to the general rule postulated in Sec. 10(d). It is, therefore, always permissible for an employer to raise an issue as to whether what has been referred is an industrial dispute at all and there can be no question of the Tribunal being bound by the order of reference. It is a settled law that the appropriate Government makes reference upon a prima facie view of the matter as to the existence or apprehension of an industrial dispute, it is open to the parties to show that what is referred is not in reality an industrial dispute at all".

The above principles laid down by the Bombay High Court therefore makes it clear that the employer is entitled to raise an objection that the dispute referred in fact is not an industrial dispute and therefore reference is not maintainable.

8. Adv. Shri Bandodkar, the learned counsel for the employer submitted that the Union namely the ACGL Workers Union submitted their charter of demands dated 3-10-87 to the employer and one of the demands was that the 16 workers whose services were terminated during the strike period should be taken back in service. He submitted that with reference to the said charter of demands a settlement was signed dated 17-10-1987 and the letter raising demands and the settlement have been produced at Exb. E-2 and Exb. E-6 respectively. He submitted that as per the terms of the said settlement the demand No. 6 which pertained to the termination of services of the 16 workmen was withdrawn by the Union. He submitted that the settlement was produced before the Labour Commissioner for registration by joint application dated 19-10-1987 which has been produced at Exb. E-7, and the same was registered in the office of the Labour Commissioner as can be seen from the letter dated 13-5-88 of the Asst. Labour Commissioner which is produced at Exb. E-9. He submitted that thereafter another charter of demands was submitted to the employer dated 30-10-87 on behalf of the Union claiming that it was on behalf of the majority of the workers, and one of the demands was that the 16 workmen whose services are terminated should be reinstated in service. He submitted that after holding conciliation proceedings a settlement dated 28-3-88 Exb. E-14 was signed with the other group was fully accepted and it was agreed that the demands raised vide letter dated 30-10-87 were fully settled. He submitted that the said settlement ws registered with the office of the Labour Commissioner and a letter to that effect has been produced by the employer at Exb. E-16. He submitted that the union has examined Shri Parulekar, the General Secretary of the Union, and he has not deposed anything as regards the malafides or invalidity of the settlement. Adv. Shri Bandodkar submitted that since the issue as regards termination of services of the 16 workmen was settled by settlement dated 17-10-87 and 28-3-88, there was no industrial dispute at the time when the reference was made by the Government, and therefore the same is not same maintainable.

Shri Subhas Naik, representing the Union submitted on the other hand that the settlement dated 17-10-88 is not signed by the Union as it is not signed by the office bearers of the Union or by the majority of the workers. He submitted that in the said settlement, nor in the charter of demands the names of the workers whose services were terminated have been mentioned and the said 16 workmen who are named in the present reference have not signed the settlement. As regards the other settlement dated 28-3-88 be submitted that the said settlement does not specify as to which demands were settled and clause 3 of the said settlement is very vague as it does not say as to which demands were settled. He submitted that if two views are possible, the view which goes to the benefit of the workmen shall be accepted. He submitted that the documents and particulary the settlements and the registration certificaties produced by the employer should not be considered as there was no pleadings to that effect in the written statement of the employer. He submitted that the evidence which is not supported by pleadings has to be discarded. He relied upon the decision of the Delhi High Court in the case of Lachman Das and another

v/s M/s Indian Express Newspapers (Bombay) Pvt. Ltd., and another reported in 1977 LIC 823 and that of Bombay High Court in the case of S. H. Kelkar & Co. Ltd., v/s Khashaba K. Jadhav and another reported in 1977 IT CLR 649 in support of his above contention. He further submitted that the settlement dated 17-10-87 does not bar the union from reagitating the issue of termination as the settlement only bars the Union from raising any dispute involving financial burden on the company. He submitted that the dismissal of the workmen was not given any fair consideration at any time. In reply Adv. Shri Bandodkar submitted that the Union did not object to the documents at the time when they were produced and exhibited in the evidence. He submitted that the Union has admitted the said documents in evidence and no objection whatsoever was raised that they were not bonafide or that they were bad. He submitted that the authorities relied upon by Shri Subhas Naik are not applicable to the present case.

9. I have carefully considered the arguments advanced by both the parties. As mentioned by me earlier, though the reference of a dispute is made by the Government to the Tribunal for adjudication, still the employer can raise the issue of maintainability of the reference on the ground that there was no industrial dispute on the date when the reference was made by the Government. In the present case the dispute which has been referred by the Government to this Tribunal is as regards the termination of services of the 16 workmen named in the reference. This dispute is raised by the Union and not by the workers individually. On the preliminary issues the employer has examined Shri Vinay Raikar, the Manager, Personnel of the employer whereas the Union examined Shri Vishweshwar Parulekar, the General Secretary of te Union. It is a settled law that the Government can make reference of only industrial dispute. In the present case it is the contention of the employer that there was no industrial dispute when the Government made the reference because the Union had already withdrawn its demand for reinstatement of the workmen named in the reference whose services were terminated. It is the case of the employer that the said demand was withdrawn vide settlements dated 17-10-87 and 28-3-88. These settlements have been produced by the employer at Exb. E-6 and E-14 respectively. Shri Subhas Naik, representing the Union has submitted that the settlements produced by the employer namely the letter dated 3rd October, 1987 Exb. E-2 raising charter of demands, the letter dated 21-11-87 Exb. E-11 from the Labour Commissioner to the Union and the employer, the minutes of the conciliation proceedings dated 2-12-87, Exb. E-12 and 1-3-88 and 10-3-88 Exb. E-13 colly, and the letter dated 13-5-88 Exb. E-16 from the Labour Commissioner informing about registration of the settlement cannot be considered by this Tribunal because there is no reference to these documents in the pleadings made by the employer in the written statement. It is the contention of Shri Subhas Naik that the said documents ought to have been pleaded in the written statement by the employer and having not done so, they cannot be looked into. He has relied upon the decision of the Bombay High Court in the case of S. H. Kelkar (supra) and that of the Delhi High Court in the case of Indian Express News Papers (Bombay) Pvt. Ltd., (supra) in support of his contention. I have gone through the said decisions. In my view the said decisions cannot be made applicable to the facts in the present case. In the case of Indian Express News Papers (Bombay) Pvt. Ltd., (supra) the Petitioner had challenged termination of the service on the ground that it was malafide and by way of unfair labour practice. The question was whether the Labour Court could have considered whether termination was bad because it was by way of retrenchment. The Delhi High Court held that the Labour Court could not have done so because there was no pleading to that effect from the Petitioners and the High Court further held that it is well settled law that no amount of evidence can be looked upon a plea which was never put forward. In the case of S. H. Kelkar (supra) similar view has been taken by The Bombay High Court. In the said case, in The Award the Labour Court had made out a case which was not even pleaded by the workman in the settlement of claim, nor such a case was made out by the workman in his deposition. The High Court held that the Award of the Labour Court cannot be sustained as the Labour Court had made out a new case which was neither pleaded nor proved by the workman. The facts involved in the present case are different. The employer has pleaded that the reference is bad in law because the dispute as regards the termination of services of the 16 workmen did not survive/exist in view of the settlement between the Union and the employer. In support of this contention the employer relied upon the settlements dated 17-10-87 and 23-8-88 as well as the other documents mentioned above as can be seen from the list of the documents dated 28-1-83 filed by the employer. The Union therefore had the knowledge about the above said documents. The said documents have been produced by the employer through its witness Shri Raikar who has deposed on the said documents and he has been also cross examined by the Union on the said documents. Besides, the Union never objected to the production of the said documents and allowed the said documents be exhibited. The question perhaps would have been different if the production of the said documents was objected by the Union. The contention of the Union is that there is no refference to the said documents in the pleadings of the employer. It is not necessary that if a document is to be produced in evidence, it has to be referred in the pleadings. The documents are required to be produced in support of the case put forth by the party, which has been done by the employer in the persent case. The documents have been produced by the employer in support of its case that the reference is not maintainable. I, therefore do not accept the contention of the Union that the documents mentioned above cannot be considered or looked into by this Tribunal, and hence the same contention is rejected

10. It is to be seen now whether there was industrial dispute at the time when the Government made the reference. The dispute which has been referrred by the Government is as regards the termination of services of the 16 workmen named in the reference. It is not in dispute that their services were termination during strike period as can be seen from the statement of claim filed by the Union as well as from the written statement filed by the employer. The strike was called off on 12th May, 1986 whereas their services were terminated on 21-1-1986. The employer as well as the Union have admitted in their evidence that there is only one union in the establishment, that is the ACGL Workers' Union, which Union is the party to the above reference. However, evidence on record shows that there were two groups in the union. The employer has produced a letter dated 30th September 1987 Exb. E-1 which letter according to the employer is written by the majority group of the Union. The said letter states that the majority of the workers in their meeting held on 25th September 1987 formed a negotiating committee consisting of Shri S. B. Gawas, Shri M. S. Parab, Shri S. A. Khalid, Shri D. C. Naik, Shri Shamba Gawas, Shri B. R. Parab, Shri L. B. Gawas and Shri Prasad Gurrala, who are the members of the Union. It was further mentioned in the said letter that charter of demands would be submitted. The employer has produced the letter dated 3-10-87 Exb. E-2 containing the various demands made by the negotiating committee of the Union. One of the demands is the reinstatement of the 16 workers whose services were terminated during the strike period. The said demands is at serial No. 6. These demands were objected to by the General Secretary of the Union Shri V. D. Parulekar as can be seen from his letter dated 7th October 1987 Exb. E-~~4~~ is mentioned in the said letter that the Union would raise charter of demands as and when the General body of workers would decide. Thereafter the employer has produced the settlement dated 17-10-87 Exb. E-6 signed between the said negotiating committee and the employer. The said settlement is registered in the office of the Labour Commissioner under No. 9/1988 as can be seen from the letter dated 13-5-88 Exb. E-9. I have gone through the terms of settlement dated 17-10-87 Exb. E-6. As per the terms of the said settlement the negotiating committee withdrew the demand No. 6 which was as regards the reinstatement of the 16 workers whose services were terminated during the strike period. The Union subsequently raised separate charter of demands dated 30-10-87 signed by the Vice President and the General Secretary of the Union. The said charter of demands has been produced by the employer at Exb. E-10. The demand No. 1 pertains to the illegal termination of service of the 16 workmen who are named in the present reference and their reinstatement in service with full back wages and continuity in service. In the course of the conciliation proceedings, the Union and the employer signed settlement dated 28-3-88 which is produced by the employer at Exb. E-14. I have gone through the said settlement. As per clause 1 of the said settlement, the union has accepted the settlement dated 17-10-87 Exb. E-6 signed between the Negotiation Committee representing a group of workmen who are the members of the Union and the employer. Clause 3 of the said settlement dated 28-3-88 Exb. E-14 states that the demands raised by the Union vide letter dated 30-10-87 are treated to be fully settled. One of the demands which was raised by the Union vide said letter dated 30-10-87 was as regards the reinstatement of the 16 workmen whose services were terminated by the employer. The said 16 workmen are the same persons who are named in the present reference. Since the Union itself agreed that the demands raised by it vide letter dated 30-10 87 are fully settled, consequently the demand for reinstatement of the 16 workmen also stoodfully settled. Also since the settlement dated 28-3-88 Exb. E-14 the union accepted the settlement dated 17-10-87 Ex. E-6 signed by the employer with the group of the workmen, it is but obvious that the union also accepted the terms of the said settlement which stated that the demand for reinstatement of the 16 workmen was withdrawn. There is no substance in the contention of Shri Subhas Naik, representing the Union that the settlement dated 17-10-87 only bars raising of dispute involving financial burden on the employer and not the issue of termination of services of the workmen. The terms of this settlement reads as follows:

> "Demand No. 6: Reinstatement of terminated workers demand is not acceptable and hence treated as withdrawn."

Therefore it can be seen that the union had specifically withdrawn its demand of reinstatement of the workmen. Once the demand was withdrawn under the settlement the union cannot raise the same demand again. Otherwise this issue would have been kept open. Therefore in terms of both the settlements demand for reinstatement of the 16 workmen whose services were terminated stood withdrawn. Both these settlements were registered in the office of the Labour Commissioner as required under the law. The employer has produced the letters dated 13-5-88 Exb. E-9 and Exb. E-19 written by the Asst. Labour Commissioner informing that the settlement dated 17-10-87 is registered under No. 9/1988 and the settlement dated 28-3-88 under No. 19/1988. In the cross examination of Shri Vinay Raikar, the witness for the employer as well as in its evidence the Union has tried to put up the defence that the group of workmen who have signed the settlement dated 17-10-88 Exb. E-6 had no authority to do so, and that the said settlement is not signed by the Union. In my view once the union accepted the settlement dated 17-10-87 signed by the employer with the group of workmen, under the settlement dated 28-3-88 signed by the Union with the employer, the Union cannot subsequently turn around and challenge the said settlement dated 17-10-87. Under the settlement dated 28-3-88, the Union has accepted the benefits given to the workers under the settlement dated 17-10-87. Therefore it is a futile attempt on the part of the Union now to challenge the validity of the settlement dated 17-10-87 Exb. E-6. Shri Vishweshwar, Parulekar, the General Secretary of the Union has stated in his cross examination that he was authorised to sign the settlement on behalf of the Union in respect of the charter of demands submitted by the union in October 1987. He has admitted in his cross examination that be-

fore signing the settlement on the charter of demands submitted by him, he was aware that a group of workmen had signed a settlement on the charter of demands submitted by them. Further he has identified his signature on the settlement dated 28-3-88 Exb. E-14. He has stated in his cross that except for the term in the settlement signed with the group of workmen that any workman who signed the settlement within the time specified therein would be paid the arrears, all other terms in both the settlements were the same. From the above evidence of the Union itself it can be seen that the signing of the settlement dated 28-3-88 Exb. E-14 has been admitted by the Union as also the terms of the said settlement. The Union has submitted that the names of the 16 workers whose services were terminated are not mentioned in the charter of demands submitted by the group of workmen on 3-10-87 nor their names are mentioned in the settlement dated 17-10-87 Exb. E-6. By this submission the Union perhaps wants to contend that the 16 workers in respect of whom the demand for reinstatement was withdrawn are not the same workers who are named in the reference, that is, they are not the same persons with reference to whom the present dispute has been referred. In the cross of the employer's witness Shri Raikar, it was suggested to him that in the letter dated 3-10-87 Exb. E-2 raising the charter of demands and in the settlement dated 17-10-88 Exb. E-6, there is no mention of the names of the 16 workers whose services are terminated and this suggestion is admitted by the said witness. However the said witness in his cross stated their names were discussed. In his deposition the said witness has stated that the 16 workers in respect of whom the demand for reinstatement was withdrawn are the same 16 workers in respect of whom the reference has been made. No. suggestion was put to the said witness in his cross examination denying his said statement. The Union in its statement of claim has admitted that 16 workers were terminated before the strike was called off. The Union has not led evidence to show that besides the 16 workers named in the reference, services of some other workers were also terminated. Besides, no suggestion whatsoever has been put to the employer's witness Shri Raikar that the 16 workers named in the reference are different from the 16 workers in respect of whom demand for reinstatement was made in the charter of demands dated 3-10-87 Exb. E-2 and with reference to whom, settlement dated 17-10-87 Exb. E-6 was signed. Shri Vishweshwar Parulekar, General Secretary of the Union, in his evidence has not stated that as per the terms of the settlement dated 28-3-88 Exb. E-14, the demand for reinstatement of the 16 workmen was not withdrawn or treated as settled. If demand for reinstatement of the 16 workmen was not treated as settled or withdrawn it was for the said witness to state as to which demands were treated as withdrawn or settled as he has signed the settlement on behalf of the union. Therefore the contention of the union that the terms of the settlement dated 28-3-88 Exb. E-14 are vague or that the settlement does not specify which demands are settled cannot be accepted.

11. From the evidence discussed above it is established that the demand for the reinstatement of the 16 workmen, who are the parties to the present reference was withdrawn by the Union under the settlements dated 17-10-87 Exb. E-6 and 28-3-88 Exb. E-14. There is no evidence on record to show that the said settlement were not accepted or were objected to by the members of the union including the said 16 workers. The Union has also not challenged the said settlements on grounds of malafides or other similar ground. Therefore the evidence on record shows that from the date i.e. 28-3-88, when the union signed the settlement Exb. E-14, there was no dispute as regards the termination of the services of the 16 workmen. The reference of the dispute in the present case has been made by the Government on 28-6-1991 as can be seen from the order of reference. This is subsequent to the signing of the settlements. Shri Parulekar, the General Secretary of the Union in his deposition has stated that the dispute as regards termination of service of the 16 workmen was raised by the Union and since the Government refused to make the reference, Writ Petition was filed in the High Court. The present reference was made during the pendency of the writ petition. Since the settlement dated 17-10-87 Exb. E-6 has been accepted by the Union, it is as good as as the said settlement is signed by the Union itself. Besides the settlement dated 28-3-88 Exb. E-14 is admittedly signed by the Union. Both the settlements are the settlements under Sec. 2(p) of the Industrial Disputes Act 1947, and therefore they are binding on the parties to the settlement. The dispute of termination of service was raised by the workmen through the Union and since the Union had withdrawn/settled the said dispute under the settlements, the union could not have raised the same dispute again. In view of the settlement no dispute existed at the time when the Government made the reference. The question perhaps would have been different if the 16 workers had raised the dispute individually and challenged the settlements on the grounds of malafide or on any other similar grounds. The present dispute is not raised by the 16 workmen individually but it is raised by the Union. In my view since the Union had setled the dispute as regards termination of the 16 workmen, under the settlement, there was no industrial dispute at the time when reference was made by the Government. Under Sec. 10 of the I. D. Act, 1947 the Government cannot make the reference of an industrial dispute which is existing or which is apprehended. There was no industrial dispute as regards the termination of services of the 16 workmen named in the reference in view of the settlements dated 17-10-87 and 28-3-88 and therefore the Government could not have made the present reference. The reference is therefore bad in law and not maintainable and I hold so accordingly. This being the case the reference is liable to be rejected. I, therefore answer the issue No. 2 in the affirmative.

12. Issue No. 1: Since it has been held by me that the reference is bad in law and not maintainable while deciding the issue No. 2, the question of deciding the issue No. I does not arise. I, therefore hold so accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that there was no industrial dispute at the time when the Government made the reference. It

is therefore held that the reference made by the government is bad in law and hence rejected.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/1659

The following Award dated 18-2-1999 in Reference No. IT/19/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 22nd March, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/19/92

Shri Ashok Kumar,
Rep. by Goa Trade &
Commercial Workers' Union,
Panaji-Goa. ... Workman/Party I

v/s

M/s U.P. State Bridge
Corporation Ltd.,
Construction Unit,
Colvale, Bardez-Goa. ...Employer/Party II

Workman-Party I represented by Shri Subhas Naik.

Employer-Party II represented by Shri A.M. Karnik.

Panaji, dated: 29-1-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 14-2-1992 bearing No. 28/58/91/-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s U.P. State Bridge Corporation Ltd., Colvale, Bardez-Goa, in terminating the services of Shri Ashok Kumar, Work Supervisor, with effect from 1-2-91 is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/19/92 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman-Party I (for short, "Union") filed the statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the union are that the workman Shri Ashok Kumar (for short, "Workman") was appointed as a diploma trainee by the employer-Party II (for short, "Employer") on 16th April 1986 and was posted at the bridge work undertaken by the employer at Vijaywada. That the employer transferred the workman at various works undertaken by them and he was ultimately posted as Supervisor at the new Mandovi Bridge from 21st March 1987 to 31st March 1988. That the workman was thereafter transferred to Colvale, Steel Bridge and was designated as a mate from 1st April 1988 to 31st July 1988. That the workman was again transferred and was posted as a supervisor at Fatorda Football Stadium from 1st August 1988 to 23rd January 1989 and thereafter was again transferred back to Mandovi Bridge works from 24th January 1989. That the workman lastly worked at Colvale Steel Bridge at Colvale. That on 1st January 1991 the workman applied for 15 days leave which was sanctioned to him and during the said leave period he fell sick and therefore sought extension of leave further 15 days and a telegram was sent by him to the employer in this respect. That the end of the extended period of leave the empolyer informed the workman that he was no more in service of the employer and that his services stood terminated w.e.f. 1st January 1991. That the union raised an industrial dispute on behalf of the workman by letter dated 11th February 1991. That the conciliation proceedings held by the Asst. Labour Commissioner, Mapusa, the employer informed the conciliation officer that the workman had left the services on his own from 30th December 1990, without any intimation and as per the Certified Standing Orders of the employer since the workman had remained absent from duties without leave beyond the period of leave granted to him he was deemed to have left the services and accordingly his name was struck of from the rolls. That since the conciliation proceedings ended in failure, the A.L.C., submitted his failure report to the Government. The Union contended that the termination of the service of the workman by the employer is illegal and unjustified and the workman is liable to be reinstated in service with full back wages and other consequential benefits.

3. Since no written statement was filed by the employer inspite of the opportunity given and none appeared on behalf of the employer when the case was fixed for filing of the written statement, the case was proceeded ex-parte against the employer and ex-parte evidence of the workman was recorded and subsequently award was passed by this Tribunal on 15-12-92 holding that the action of the employer in terminating the services of the workman is illegal and unjustified and the workman was directed to be reinstated in service with full back wages.

4. The employer thereafter filed an application dated 2-2-93 for setting aside the ex-parte award dated 15-12-92 passed by this Tribunal. After the parties were heard, by order dated 11-11-94 the ex-parte award dated 15-2-92 was set aside and the employer was permitted to file the written statement. The employer thereafter filed the written statement which is at Exb. 6. The employer stated that the workman has not raised any demand with the employer and the demand was taken up by the union which cannot be his representative union he being in the supervisory cadre. The employer stated that the conciliation proceedings therefore cannot be treated as valid and there can be no dispute without raising the demand with the employer by the workman. The employer stated that none of their employees in the supervisory cadre were the members of the union namely the Goa Trade & Commercial Workers Union. The employer admitted that the workman was employed with the employer but stated that his total period of employment was only for 11 months i.e. from 1-2-90 to 31-12-90. The employer denied that the workman was transferred from place to place as alleged by the union. The employer stated that the workman had absented himself from duty since 1st January 1991 and no leave was granted to him and his temporary employment had come to an end from 1-1-91. The employer stated the workman terminated his services on his own accord as he left the services of the employer on his own. The employer stated that since the workman voluntarily abandoned his services he is not entitled to re-employment or compensation. The employer stated that the workman was employed in supervisory cadre and therefore the provisions of the Industrial Disputes Act, 1947 are not applicable to him. The employer denied that the workman is entitled to any relief as claimed by the union and stated that the reference is liable to be rejected.

5. On the pleadings of the parties, following issues were framed.

1. Whether Party I proves that the standing orders of Party II certified at Uttar Pradesh are not applicable in the State of Goa?

2. Whether Party I proves that unauthorised absence or absence beyond the period of leave granted is "Misconduct" and hence his services could not have been terminated without holding enquiry?

3. Whether Party I proves that Party II did not comply with the provisions of Sec. 25 F of the I.D. Act, 1947 and hence the termination of his services by Party II is illegal and bad in law?

4. Whether Party I proves that termination of his services by Party II is arbitrary malafide and by way of victimisation and hence illegal?

5. Whether Party I proves that the termination of his services by Party II w.e.f. 1-2-91 is illegal and unjustified?

6. Whether Party II proves that Party I being employed as a "Works Supervisor" was in the supervisory cadre, and hence the provisions of the I.D. Act, 1947 were not applicable to him?

7. Whether Party II proves that there is no industrial dispute as no demand was on the Party II by the Party I?

8. Whether party II proves that Party I voluntarily abandoned the services since 1st January, 1991?

9. Whether Party I is entitled to any relief?

10. What Award?

6. My findings on the issues are as follows:

Issue No. 1: Does not arise.
Issue No. 2: Does not arise.
Issue No. 3: Does not arise.
Issue No. 4: Does not arise.
Issue No. 5: Does not arise.
Issue No. 6: Does not arise.
Issue No. 7: In the affirmative.
Issue No. 8: Does not arise.
Issue No. 9: Party I is not entitled to any relief.
Issue No. 10: As per Order below.

Reasons

7. *Issue No.* 7: This issue is taken up first because it goes to the root of the matter as to whether the reference is maintainable. The employer has raised the contention that there is no industrial dispute because the workman never raised the dispute before the employer as regards termination of his service. The employer has also raised the contention that the workman being in the Supervisory cadre was not the member of the union and hence the conciliation proceedings held by the conciliation officer are invalid.

8. Since the employer had taken the defence in the written statement that there is no industrial dispute in view of the facts stated above, the union ought to have led evidence to disprove the contention of the employer. I would like to point out here that this Tribunal had passed the ex-parte Award dated 15-12-92 in this case in favour of the workman directing the employer to reinstate the workman with full back wages. Subsequently, on the application filed by the employer, the ex-parte Award dated

15-12-92 was set aside by order dated 11-11-94 and the employer was allowed to contest the proceedings. After the issues were framed, the case was fixed for the evidence of the workman. Shri Subhas Naik representing the union submitted that the union was relying on the statement of the workman which was recorded prior to the setting aside of the ex-parte award i.e. at the time when ex-parte evidence of the union was recorded. However, he undertook to produce the workman for cross-examination by the employer. Several opportunities were given to the union to produce the workman for cross examination, but the union did not do so. Shri Subhas Naik, representing the union submitted that he is unable to contact the workman and therefore after several opportunities were given the cross examination of the workman as well as the evidence of the union was closed. Consequently, the statement of the workman and documents produced by him in the course of his statement are liable to be discarded, and the same cannot be looked into. It is as if no evidence has been led by the union or the workman in this case.

9. In the present case, the order of reference shows that the dispute as regards the termination of service of the workman was raised by the union, that is, the Goa Trade & Commercial Workers Union and not by the workman himself. This is also evident from the fact that the statement of claim is filed by the union on behalf of the workman. Since the employer in the written statement had taken the defence that the workman was working in the supervisory cadre, he was not the member of the union, it was for the union to prove to the contrary. The Union ought to have produced the records to show that the workman was its member. This is the basic requirement as the union could not raise the dispute unless the workman was its member. The employer has examined Shri Rajendranath Mishra, the Dy. Project Manager, as its witness. He has stated that the workman was working as the works supervisor. This statement has not been challenged or disputed by the union in his cross examination. The union did not examine any person on its behalf to prove that the workman was its member. The Calcutta High Court in the case of Deepak Industries Ltd., and another v/s State of West Bengal, reported in 1975 Lab. I.C. 1153 has held that mere negotiations by some officials of the union with the employer for conciliation or executing certain documents on behalf of the workmen prior to reference are no conclusive proofs of the authority of the union to represent the workman whose dispute it is espousing before the Tribunal. The Bombay High Court in the case of Iqbal Ahmed Kamruddin v/s P.L. Muzumdar, reported in 1992 (64) FLR 827 has held that it is always open to a party to show to the forum that the dispute referred for adjudication though purported to be an industrial dispute, is in reality not an industrial dispute at all. The principles laid down by the Calcutta High Court and the Bombay High Court in the above referred cases, therefore makes it clear that the employer is entitled to raise an objection that the dispute referred is not an industrial dispute, even after the reference is made by the Government and the mere fact that the employer participated in the conciliation preceedings or did not raise objection during the conciliation proceedings does not debar the employer from raising the objection before the Tribunal in a refernce that the union has no locus standi to raise the dispute and hence there is no industrial dispute.

10. Industrial Dispute envisages a collective dispute. Unless there is an industrial dispute, the reference made by the Government is not maintainable. However, after the introduction of the sec. 2A to the Industrial Disputes Act, 1947, an individual dispute as contemplated under the said Act is deemed to be an industrial dispute within the meaning of the Act. Sec. 2A contemplates indiviual dispute as an industrial dispute when a workman is discharged, dismissed, retrenched or his services are terminated by an employer. In the present case it is the contention of the workman that his services are terminated. The order of reference shows that the dispute was raised by the union, that is the Goa Trade & Commercial Workers' Union and not by the workman himself. This is also evident from the fact that the statement of claim is signed by the union, which means that it is the union who espoused the dispute on behalf of the workman. If the dispute was raised by the workman himself, it would have been deemed to be an industrial dispute and the reference of the dispute by the Government would be valid. But since the dispute is raised by the union and the employer challenged its authority to raise the dispute, the union ought to have proved its authority by producing some material evidence before the Tribunal. I am supported in my view by the decision of the Calcutta High Court in the case of Deepak Industrial Ltd. (supra). The Calcutta High Court in para. 7 of its judgement has held that when the dispute is sponsored, it seems to have been uniformly held by the judicial decisions that when the authority of the union is challenged by the employer, it must be proved by the production of material evidence before the Tribunal to which such dispute has been referred that the union has been duly authorised either by a resolution of its members or otherwise that the it has the authority to represent the workman whose cause it is espousing. Therefore, in the present case since employer in the written statement had taken the defence that was working in the supervisory cadre, he was not the member of the union it was for the union to prove to the contrary. The union ought to have produced the material evidence to show that the workman was its member. This was the basic requirement because the union is authorised to raise the dispute only on behalf of its members and not otherwise. The membership of the workman with the union is to be proved by the union and not by the employer as the records of the membership are maintained and possessed by the union. However, the unon did not lead any evidence on this aspect and consequently there is no evidence that the workman was the member of the union. This being the case it has to be held that the union had no authority to raise the dispute on behalf of the workman. There is no evidence on record to show that the workman had raised the dispute directly on the employer.

11. The conciliation proceedings were held by the conciliation officer on the dispute raised by the union,

and the Government made the reference on receipt of the failure report the conciliation officer. In the case of Sindhu Resettlement Corporation Ltd., v/s Industrial Tribunal of Gujrat and others, reported in AIR 1968 SC 529, the Supreme Court has held that a mere demand to the Government without a dispute being raised by the workman with their employer become an industrial dispute. In para. 4 of the judgment the Supreme Court held as folllows:

"It may be that the Conciliation Officer reported to the Government that an industrial dispute did exist relating to the reinstatement of respondent No. 3 payment of wages to him from 21st January 1958 but when the dispute came up for the Tribunal, the evidence produced clearly showed that no such dispute had ever been raised by either respondent with the management of the appellant. If no dispute at all was raised by the respondents with the management any request sent by them to the Government would only be demand by them and not an industrial dispute between them and their employer."

The above decision of the Supreme Court therefore lays down the law that the dispute which is referred by the Government must be the one which was raised by the workman with the employer. If it is not, the dispute referred cannot be an industrial dispute, and the reference made by the Government under sec. 10 of the I.D. Act, 1947 in respect of that dispute is not competent. The Himachal Pradesh High Court in the case of M/s Village Papers Pvt. Ltd.,v/s State of Himachal Pradesh and others, reported in 1993 Lab. I.C. 99, which is a full bench decision, after considering the decisions of the various High Courts and that of the Supreme Court, including the decision of the Supreme Court in the case of Sindhu Resettlement Corporation Ltd. (supra) has held that a mere demand to the Government cannot become an industrial dispute without it being raised by the workmen with their employer, and if such a demand is made to the Government it can be forwarded to the management and if rejected becomes an industrial dispute. The High Court has held that a demand can be made through the Conciliation Officer who can forward it to the management and seek its reaction and if the reaction is negative and not forth coming and the parties remain at logger-heads, a dispute exists and a reference can be made. Therefore what is established from the above referred decisions is that unless there is a demand from the workman on the employer prior to the making of the reference, the Government cannot make reference of the dispute to the Tribunal for adjudication. This demand can be raised directly with the employer or through the Conciliation Officer.

12. In the present case there is no evidence that the workman had directly raised the dispute with the employer nor that it was raised through the Conciliation Officer. There is no evidence whatsoever from the union in the present case. As mentioned earlier, it is evident from the order of reference and the statement of claim filed by the union that the dispute was raised by the union on behalf of the workman. There is no evidence that this dispute was raised by the union directly with the employer. Even if it is presumed that the dispute was raised through the Conciliation Officer, the union has failed to prove that it had the authority to raise the dispute on behalf of the workman. The employer had contended that the workman was not the member of the union. Therefore the burden was on the union to prove that the workman was its member. However, no evidence has been produced by the union to prove the membership of the workman. Therefore it cannot be said that there was a demand from the workman on the employer prior to the making of the reference by the Government. This being the case, in the light of what is discussed above, the dispute which has been referred by the Government is not an industrial dispute and hence the reference is not competent. In the circumstances, I hold that the reference of the dispute made by the Government as regards termination of services of the workman is not competent as there was no industrial dispute at the time when the Government made the reference. In my view the reference is not maintainable and is liable to be rejected. I, therefore answer the issue no. 7 in the affirmative and hold that the reference is not maintainable and is liable to be rejected.

13. Since while deciding the issue No. 7 it has been held by me that the reference is not maintainable and is liable to be rejected, the question of deciding other issues or granting any relief to the workman does not arise. In the circumstances, I answer the issues accordingly and pass the following order.

Order

It is hereby held that there was no industrial dispute at the time when the Government made the reference and hence the reference is not maintainable. The reference made by the Government is therefore rejected.

No order as to costs.

Inform the government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/1842

The following Award dated 12-2-1999 in Reference No. IT/7/87 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947(Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 30th March, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI.

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer).

Ref. No. IT/7/87

Workmen
Rep. by the Goa Trade and
Commercial Workers' Union,
Velho Bldg., 2nd floor,
Panaji-Goa. ... Workmen/Party I

V/s

M/s Kesarval Brewerages
(Now known as M/s United
Breweries Ltd.)
Bethora, Ponda-Goa. ... employer/Party II

Ref. No. IT/8/87

Workmen,
Rep. by Goa Trade and
Commercial Workers' Union,
Velho Bldg., 2nd floor,
Panaji-Goa. ... Workmen/Party I

V/s

M/s Mc Dowell & Co. Ltd.,
Bethora, Ponda-Goa. ... Employer/Party II

Ref. No. IT/2/88

Workmen,
Rep. by Goa Trade and
Commercial Workers' Union,
Velho Bldg., 2nd Floor
Panaji-Goa. ... Workmen/Party I

V/s

M/s Mc Dowell & Co. Ltd.,
Bethora, Ponda-Goa. ... Employer/Party II

Workmen/Party I - Represented by Shri Subhas Naik.

Employer/Party II - Represented by Adv. G. K. Sardessai.

Panaji, dated: 12-2-1999.

AWARD

These are the references made by the Government of Goa in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act,1947 (Central Act 14 of 1947). The above references can be conveniently disposed of by a common award, since the settlement arrived at between the parties is common for all the above references.

2. The reference registered under No. IT/7/87 is made by the Government of Goa by order dated 12th March 1987 bearing No. 28/8/87-ILD and the issue referred for adjudication to this Tribunal is as follows:

Whether the action of the management of M/s Kesarval Brewerages Ltd., at Bethora, Ponda-Goa, in terminating the services of the following workmen with effect from the date shown against their name is legal and justified.

1. Shri P. S. Dias 12-7-86

2. Shri Ankush Mayenkar 12-7-86

If not, to what relief these workmen are entitled to?

3. The reference registered under No. IT/8/87 is made by the Government of Goa by order dated 12th March 1987 bearing No. 28/8/86-ILD and the issue referred for adjudication to this Tribunal is as follows:

Whether the action of the Management of M/s McDowell & Co. Ltd., Bethora, Ponda, Goa in terminating the services of the following workmen with effect from the date shown against their names is legal and justified?

1. Shri Caitan Pereira 12-7-86
2. Shri Naoso Kalangutkar 12-7-86
3. Shri Satyavan Naik 12-7-86
4. Shri Subhash Agastipurkar 16-7-86
5. Shri Hari R. Ifalkar 16-7-86
6. Shri Nazareth Fernandes 16-7-86
7. Shri Ramakant L. Goankar 16-7-86
8. Shri Ganpat D. Vadikar 16-7-86
9. Shri Bhalchandra Banbagker 16-7-86
10. Shri Gurudas N. Gawde 16-7-86
11. Shri Tukaram Dargalker 16-7-86
12. Shri Husen Shah 16-7-86
13. Shri Omu P. Goankar 16-7-86
14. Shri Mangaldas K. Naik 16-7-86

If not, to what relief these workmen are entitled to?

4. The reference registered under No. IT/2/88 is made by the Government of Goa by order dated 6th January 1988 bearing No. 28/8/87-ILD and the issue referred for adjudication to this Tribunal is as follows:

"Whether the action of the management of M/s McDowell and Company Limited, Bethora, Ponda-Goa, in terminating the services of the following workmen with effect from the dates shown against their respective names is legal and justified?

Sr. No.	Name	Designation	Dt. of termination
1.	Shri R. B. Shirodkar	Store Keeper	24-5-1986
2.	Shri Narayan K. Naik	Workman	20-4-1987
3.	Bhanudas T. Gaunkar	Workman	20-4-1987
4.	Shri Sadanand Dhavlikar	Workman	20-4-1987

If not, to what relief the workmen are entitled to ?

5. On receipt of the notice from this tribunal the Workmen/Party I (For short, "Union") and employer/Party II (For

short "Employer") put in their appearance and filed their statement of claim and written statements respectively in all the above references. In respect of the reference No. IT/8/87 though the reference of the dispute was in respect of the termination of service of 14 workmen named in the order of the reference, the union in the statement of claim filed by them admitted that out of the 14 workmen, the employer subsequently reinstated 10 workmen with continuity in service namely Shri Naoso Kalangutkar, Shri Satyavan Naik, Shri Subhas Agastipurkar, Shri Nazareth Fernandes, Shri Ramakant L. Goankar, Shri Ganpat D. Vadikar, Shri Gurudas M. Gaude, Shri Hussen Shah, Shri Omu P. Goankar and Shri Mangaldas K. Naik. This being the case dispute with reference to the said 10 workmen did not survive and consequently the dispute with reference to the remaining 4 workmen only namely Shri Caetano Pereira, Shri Hari R. Ifalker, Shri Balchandra Banbagker and Shri Tukaram Dargalkar was continued with. In all the above three references evidence was partly recorded, and thereafter the case fixed on 15-12-98 for filing the terms of the settlement as the parties submitted that they were trying to arrive at a settlement. Accordingly when all the above three references were taken up for hearing on 15-12-98, the union as well as employer submitted that the dispute between them involved in all the above three cases was settled and that the settlement was common for all the above three cases namely Referene No. IT /2/88, IT/7/87, and IT/8/87. With reference to REF. No.IT/2/88, the parties submitted that the the exception of the workman Shri R. B. Shirodkar, the dispute as regards the other workmen is settled. The parties prayed that all the above references be disposed of in terms of the settlement dated 8th December, 1998 which is common for all the above three references. I have gone through the said terms of settlement dated 8-12-98. The settlement is common for the above three references. I am satisfied that the settlement is in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent and in terms of the settlement dated 8-12-1998 which is common for all the above three references namely Ref. No.IT/7/87, IT/8/87 and IT/2/88.

Order

It is agreed between the parties that the under mentioned workmen involved in the cases referred to shall be paid amounts specified in the Annexure "A" in full and final settlement of all their claims.

The references are as under:

(a) IT/8/87 Caetano Pereira
Balchandra Banbagkar
Hari Impalkar

(b) IT/25/87 Narayan K. Naik

(c) IT/2/88 Narayan K. Naik

2. Accordingly, the following settlements arrived at between the parties in respect of the below mentioned references and the workmen are deemed as accepted and the said matters are also treated as settled.

(a) IT/7/87 Ankush V. Mayenkar
IT/7/87 P. S. Dias
(b) IT/8/87 Tukaram Dhavlikar
(c) IT/16/87 Sadanand Dhavlikar
IT/2/88 Sadanand Dhavlikar
(d) IT/23/87 Bhanudas T. Gaunkar
IT/2/88 Bhanudas T. Gaunkar
(e) IT/37/87 Jaiwant Sawant

3. The parties agree that the dispute of Mr, R. B. Shirodkar in IT/2/88 is not settled by this settlement.

4. The parties agree that the above settlement is in full and final settlement of the above disputes referred by the Government with the exception of Mr. R. B. Shirodkar (IT/2/88) and the parties pray that the Hon'ble Tribunal pass an award in terms of the above settlement.

ANNEXURE "A"

1. Name	Caetano Pereira	Balchandra Banbagkar	Hari Impalkar	Narayan K. Naik
2. Subs. Allowance from 1-7-94 to 30-11-98 (53 months)	32807	32542	26712	29203
3. Exgratia Amt.	37140	25750	39759	34763
4. Interest 12% from 01.01.94 to 30.11.98 (59 months)	29281	20301	31346	27407
5. Gratuity	7142	4959	N.A.	3815
6. Interest 12% from 01--01-94 to 30-11-98 (59 months)	5631	3910	N.A.	3007

Name	Caetano Pereira	Balchandra Banbagkar	Hari Impalkar	Narayan K. Naik
7. Provident Fund	51068	42780	22640	26606
8. Total	163069.62	130242.48	120456.36	124801.19
	Case Nos.	IT/8/87	IT/8/87	IT/2/88 IT/25/87
Cheque No.	204659	204660	204661	204662
Drawn on	..... Corporation Bank, Ponda			
Dated	..... 8th December, 1998			

No order as to costs. Inform the Government accordingly.

Sd/-

(AJIT AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/1843

The following Award dated 19-1-1999 in Reference No. IT/99/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 30th March, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/99/98

Smt. Lucy Fernandes,
Chicalim-Goa ...Workman/Pary I

V/s

M/s Gay Kindergarden,
Vasco-da-Gama. ...Employer/Party II

Workman-Party I absent.

Employer-Party II represented by Adv. A. Lourenco.

Panaji, dated: 19-1-1999.

AWARD

In exercise of the powers conferred by clause by (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 28th October, 1998 bearing No. IRM/CON/ /VSC/19/98/11508 referred the following dispute for adjudication by this Tribunal.

(1) "Whether the action of the management of M/s Gay Kindergarden, Vasco-da-Gama, Goa, in terminating the services of Smt. Lucy Fernandes, with effect from 12-8-1996, is legal and justified?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/99/98 and registered A/D notice was issued to the parties requiring them to attend the hearing fixed on 8-12-98 at 10.30 a.m. Both the parties i.e. the Workman/ Party I (for short, "Workman") and the Employer/Party II (for short, "Employer") were duly served with the said registered A/D notice. The workman though duly served the notice did not appear. However, Adv. Shri A. Lourenco appeared on behalf of the emlpoyer and filed vakalatnama. Since the workman had remained absent the case was adjourned to 5-1-99 at 10.30 a.m. so as to give one more opportunity to the workman to appear and file her statement of claim in support of her case. On 5-1-99 the workman again remained absent and consequently no statement of claim came to be filed on her behalf. Adv. Shri A Lourenco appeared on behalf of the employer and submitted that he does not want to file any statement of claim/ /written statement on behalf of the employer. He submitted that since the workman had raised the dispute stating that termination of her service is illegal and unjustified the burden was on her to prove te same by leading proper evidence. He submitted that since the workman has not participated in the proceedings inspite of the

opportunity given, the reference cannot be answered in her favour. He submitted that the award be passed in favour of the employer holding the termination legal and justified.

3. The reference of the dispute in the present case has been made by the Government at the request of the workman since she alleged that the termination of her services by the employer is illegal and unjustified. It is a settled law that a party who challenges the legality of the order or the action taken by the employer, the burden lies upon that party to prove the illegality of the said order or the action. The Allahabad High Court in the case of V.K. Raj Industrial v/s Labour Court reported in 1981(29) F/R 194 has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before that Court, but the principles underlying the said Act are applicable. The High Court has held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any relief. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 has held that there is nothing in the Industrial Disputes Act, 1947 that indicates a departure from the general rule that he who approaches the Court for a relief should prove his case. The Bombay High Court further held that the provisions of Rule 10B of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the pary who raises the industrial dispute is bound to prove the contention raised by him and an Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute.

4. In the present case it is the workman who raised the dispute stating that her services were illegally terminated and the Government made the reference at her request. Therefore, applying the law laid down by the Bombay High Court and the Allahabad High Court in the cases above referred to, the burden was on the workman to prove that the action of the employer in terminating her services w.e.f. 12-8-96 was illegal and unjustified. The workman was duly served with the notice but she chose to remain absent and consequently no statement of claim came to be filed on her behalf. Therefore, there is no material before me to hold the action of the employer in terminating the services of the workman is not legal and justified. In the absence of any evidence the reference cannot be answered in favour of the workman. In circumstances I hold that the workman has failed to prove that the action of the employer in terminating her services w.e.f. 12-8-96 is illegal and unjustified.

Hence, I pass the following order.

Order

It is hereby held that the action of the management of M/s Gay Kindergarden, Vasco-da Gama, Goa, in terminating the services of the workman Smt. Lucy Fernandes w.e.f. 12-8-96 is legal and justified. It is hereby further held that the workman Smt. Lucy Fernandes is not entitled to any relief.

No order as to costs. Inform the Government.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/1845

The following Award dated 2-2-1999 in Reference No. IT/67/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 30th March, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/67/94

Workmen, rep. by
The General Secretary,
Gomantak Mazdoor Sangh,
Kamakshi Krupa, Khadapaband,
Ponda - Goa. ... Workmen/Party I

V/s

M/s Fabril Gasosa,
Borim, Ponda, Goa.

Rep. by

1. Mrs. Maureen Sequeira,
2. Miss Aisha Sequeira,
3. Miss Amita Sequeira,
4. Mr. Anil Sequeira
R/o Campal
Panaji, Goa. ... Employer/Party II

Workmen/Party I represented by Adv. Shri P. B. Devari.

Employer/Party II represented by Adv. Shri G. K. Sardessai.

Dated: 10-2-1998

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Government of Goa by order No. 28/19/94-LAB dated 31-5-94 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Fabril Gasosa, Borim Ponda Goa, in terminating the services of S/Shri Narshiv Naik, Harichandra Gaonkar, Dayanand Borkar and Tulshidas Naik w.e.f. 27-8-1993 is legal and justified?

If not, to what relief the workmen are entitled ?"

No. IT/67/94 and registered AD notice was issued to the Parties. In persuant to the said notice, the parties put in their appearance. The workmen/Party I (for short "Union") filed the Statement of Claim which is at exb. 3. The facts of the case in brief as pleaded by the Union are that the Employer/Party II (For short "Employer") is engaged in the business of manufacturing soft drinks in factory situated at Borim, Ponda Goa and that the workers of the Employer are the members of the said union. That S/Shri Narshiv Naik, Harichandra Gaonkar, Dayanand Borkar and Tulshidas Naik (For short "Workmen") were employed with the employer in their factory at Borim. That the workmen through the Union filed a claim for non-payment of wages towards increase in Variable Dearness Allowance in the year 1991. That the employer, in order to victimise the workmen terminated their services on fabricated and false charges. That, prior to the termination of their services, the employer did not obtain the permission from this Tribunal as the proceedings as regards the charter of demands were pending before this Tribunal. The Union contended that the Inquiry Officer gave findings not based on any evidence and that he was biased while conducting the enquiry. The Union contended that the action of the employer in dismissing the workmen from service is illegal and unjustified and bad in law and therefore, the workmen are liable to be reinstated in service with full back wages.

3. The Employer filed written statement which is at Exb. 4. The Employer stated that the claim filed by the Union for recovery of money has no connection whatsoever with the charges that led to the dismissal of the workmen. The employer denied that the services of workmen were terminated by way of victimisation on false and fabricated grounds. The employer stated that the workmen were charge sheeted for having committed grave misconducts and that they were also placed under suspension. The employer stated that persuant to the chargesheet, domestic enquiries were conducted and the Inquiry Officer conducted the enquiry in a fair and proper manner after giving every opportunity to the workmen to defend themselves in the enquiry. The employer denied that the Inquiry Officer was bias or that his findings are perverse. The employer also denied that any prior approval of the Tribunal was required before dismissing the workmen from service. The employer stated that the dismissal of the workmen from service is legal and justified. The Union thereafter filed rejoinder which is at Exb. 5

4. on the pleadings of the parties, issues were framed at Exb. 6 and the case was fixed for the evidence of the Union. On 29-1-98, when the case was fixed for hearing, the parties submitted that the dispute between them was amicably settled and they filed terms of settlement dated 10-1-98 at Exb. 10. The parties also filed an application praying that an Award be passed in terms of the said settlement. The Parties also filed an application stating that the dispute of workman Shri Narshiv Naik has been settled by settlement dated 10-1-98 and that the said settlement has been filed in approval application No. IT/35/94. In the circumstances I hold that the reference in respect of the workman Narshiv Naik does not survive and he is not entitled to any relief and I order accordingly. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 10-1-98 Exb. 10.

Order

1. It is agreed by and between the parties that out of the six dismissed workmen, three workmen, namely Alex Dias, Gurudas Naik, and Harichandra Gaonkar shall be reinstated with effect from 1-1-98, with continuity of service. However, they shall be considered as Juniors but without back wages. The above said three workmen shall be considered as Juniormost in their respective grades, namely grade V, Grade II and I respectively, as on the date of their re-employment, for the purpose of Sections 25F and 25FFA of the Industrial Disputes Act of 1947. The Union and the said workmen assure that the workers who are reinstated shall work in a disciplined manner and give fullest co-operation.

2. Upon reinstatement from 1-1-98, the three workmen, namely Alex Dias, Gurudas Naik and Harichandra Gaonkar shall draw a salary equivalent to the basic as last drawn by them, plus two increments of their grade, plus allowances as applicable. The details are as below.

Name	Alex Dias	Gurudas Naik	Harichandra Gaonkar
Basic	1015	671	526
Increments	50+50	30+30	25+25
F. D. A	1806	1806	1806
V. D. A.	As per Settlement dt. 12-12-97	As per Settlement dt. 12-12-97	As per Settlement dt. 12-12-97
HRA @ 12% basic	133.80	87.72	69.12
Sundry Allowance	52	52	52
Washing Allowance	15	15	15
Total	Rs.3121.80 + V. D. A.	Rs.2691.72 + V. D. A.	Rs.2518.12 + V. D. A.

3. It is agreed by and between the parties that the above reinstated workmen, namely Alex Dias, Gurudas Naik, Harichandra Gaonkar shall not earn any leave for the period of their unemployement.

4. It is agreed by and between the parties that the workmen namely Tulshidas Naik, Dayanand Borkar and Micheal Lourenco agree that they are properly relieved from the services and they have accepted all their dues and are not interested in reinstatement with the Company.

5. It is agreed by and between the parties that the workmen, namely Micheal Lourenco, Tulshidas Naik and Dayanand Borkar shall be paid an ex-gratia amount of Rs. 12,154/- (Rupees Twelve thousand, one hundred and fifty four only), Rs. 11,513/- (Rupees Eleven thousand, five hundred and thirteen only) and Rs. 11,115/-, respectively, in full and final settlement of all their claims raised in the Reference No. IT/67/94 and shall have no further claims against the Management. Accordingly, applications for approval bearing Reference Nos. IT/34/94, IT/37/94 and IT/38/94 shall be withdrawn.

6. It is agreed by and between the parties that the workmen, namely Alex Dias, Harichandra Gaonkar and Gurudas Naik shall be paid an ex-gratia amount of Rs. 5,000/- each, in full and final settlement of all their claims against the Management.

7. It is agreed by and between the parties that those workmen who had accepted their termination as per clauses above shall be paid their dues arising out of this settlement on or before 10th January, 1998.

8. It is agreed and declared that the amounts payble by M/s Fabril Gasosa to to the workmen wherever applicable, in manner hereinabove provided for, are in full and final settlement and satisfacton of all the claims for compensation for loss of Office or otherwise howsoever.

9. It is agreed between the parties that this settlement shall be filed in adjudication proceedings pending before the Hon'ble Industrial Tribunal for consent award in Reference No. IT/67/94.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/1846

The following Award dated 24-2-1999 in Reference No. IT/9/91 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary, Labour.

Panaji, 30th March, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer).

Ref. No. IT/9/91

Shri Sundar K. Gaonkar,
Rep. by All Goa Co-op. Workers Union,
Panaji-Goa ... Workman/Party I

V/s

M/s Goa Bagayatdar Sahakari
Kharedi Vikri Society Ltd.,
Bagayatdar Bhavan,
Ponda-Goa. ... Employer/Party II

Workman-Party I represented by Adv. D. P. Bhise.

Employer-Party II represented by Adv. A. Nigalye.

Panaji, dated: 24-2-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order No. 28/74/90-LAB dated 21-1-1991 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of the Goa Bagayatdar Sahakari Vikri Society Ltd., Ponda, in refusing employment of Shri Sundar K.Gaonkar with effect from 18-5-1990 is legal and justified.

If not, to what relief the workman is entitled to ?"

2. On receipt of the reference a case was registered under No.IT/9/91 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman-Party I (for short, "Workman") filed a statement of claim. The facts of case in brief as pleaded by the workman are that he was employed as a peon with the employer-Party II (for short, "Employer") on 15th July 1983 and he worked at the Head Office of the employer. That as a peon his duties were mainly attached to the Head

Office and his duties involved paying attention to the call given by the officers and other employees in the office, to take, move and give files or books etc., as per instructions and do the other work generally performed by a peon working in any Administrative Office. That on 17-4-90 the workman handed over one file of D.A. to one Shri Pradeep Bhat an employee of Employees Credit Society working at the Head Office. That the workman was summoned by the Manager and demanded explanation for giving file without permission and further without giving any opportunity to the workman to submit his explanation, the Manager directed the workman not to work at the Head Office from 18-4-90 and asked him to report at the shop as "Mapari". That the workman being aggrieved by the said action of the Manager wrote several letters but nothing was done in the matter. The Manager was pressurising the workman to leave the membership of All Goa Co-operative Workers Union but the workman did not do so. That the Manager did not allow the workman to sign the card at the Head Office and obstructed the workman from performing his work at the Head Office and also did not issue written orders of transfer. That the workman approached All Goa Co-operative Workers Union and the Union raised the dispute by letter dated 30-4-90 which was admitted in conciliation. That in the course of the conciliation proceedings, Adv. Shri Mohandas Sawaikar representing the employer submitted that the workman should first join his duties and agreed to issue orders within 7 days from the date of joining duties by the workman. That as per the agreement the workman reported for duties at the Head Office but the Manager did not allow him to do so and therefore by letter dated 18-5-90 the workman brought this fact to the notice of the conciliation officer. That thereafter the workman received a letter dated 14th May, 1990 on 22nd May, 1990 from the Employer informing him that his registration had been accepted by the Managing Committee w.e.f. 19-4-90. The workman contended that he had never given any resignation letter and stated that one letter was obtained forcibly from him by the Manager about one and half year back. That the conciliation proceedings ended in failure and subsequently failure report was submitted to the Government by the conciliation officer. The workman contended that the action of the employer of refusing employment to him is illegal and unjustified. The workman therefore claim that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that the workman was employed by the employer in the capacity of Gr.IV employee since 5th July 1983 till the acceptance of his resignation on 19-4-90. The employer stated that in the month of April, 1990 Shri Shashikant Ganpat Umarye, the Manager of the employer came to know that the workman had indulged in certain acts of misbehaviour, misconduct and malpractices and therefore the said Manager called upon the workman and he enquired with him about his misbehaviour, misconduct and malpractices. The employer stated that the workman of the employer have established a Co-operative Credit Society in order to facilitate the workmen who are monetary purpose and the said society does not have any link or connection of whatsoever nature with the business of the employer. The employer stated that its Manager came to know that the workman was always providing files and other information to one Shri Pradeep Bhat without the permission from the Manager and since employer lost confidence in the workman he was directed to work as Mapari in the grocery shop of the employer which is situated in the ground floor of the same, where the Head Office is situated. The employer stated that the said order was communicated to the workman in writing on 18-4-90 and the workman was required to report to the Secretary/Incharge of the Grocery Shop on the same day i.e. on 18-4-90. The employer stated that on that day the workman wrote a letter to the Manager stating that he is not able to do the work of Mapari in the grocery shop and as such he did not report to the Secretary/Incharge of the grocery shop. The employer stated that the workman was again given orders that he should work as Mapari in the grocery shop but inspite of the orders,the workman did not report for his duties in the grocery shop. The employer stated that the workman had appeared in the office of the employer on 26-12-1988 accompanied by Shri Gurudas Dhond and Shri Chandrakant Gaonkar who were the sureties for the workman as per the Security Bond given by him. The employer stated that during the discussions between the workman and the said sureties and the employer, the workman in the presence of the said two sureties gave in writing resignation letter saying that if he remained absent at any time thereafter, the same may be treated as his resignation. The employer stated that the workman remained absent from 18-4-90 and therefore considered his resignation dated 26-12-88 which was given in the presence of the two sureties, the employer accepted the said resignation from 19-4-90. The employer stated that the entire dues of the workman were cleared and the workman accepted the same without any objection. The employer stated that acceptance of the resignation of the workman by the employer is legal and justified. The workman thereafter filed rejoinder at Exb.6.

4. On the pleadings of the parties, issues were framed and thereafter the case was fixed for the evidence of the workman. After the evidence of the workman was completed the case was fixed for employer's evidence. On 10-2-99 when the case was fixed for hearing, the parties appeared along with their respective Advocates and submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 10-2-99 at Exb.28. The parties also filed an application praying that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 10-2-99 Exb.28.

ORDER

1. The workman and the employer hereby agree that the employer shall pay to the workman a sum of

Rs. 65,000/-(Rupees Sixty Five Thousand only) in full and final settlement of his claim in Reference No. IT/9/91 pending in the Hon'ble Industrial Tribunal, Government of Goa, Panaji.

2. The aforesaid amount of Rs. 65,000/- (Rupees Sixty Five Thousand only) is paid to the workman today by cheque No. 228416 dated 10-2-1999 drawn on the Goa State Co-operative Bank Ltd., Ponda, Goa.

3. The workman hereby agrees that in view of the aforesaid payment of Rs. 65,000/- (Rupees Sixty Five only) to him, claims with the employer are conclusively settled and he has no claim of whatsoever nature against the employer.

4. The parties hereto agree to jointly send a copy of this settlement to the Commissioner for Labour, and Ex-Officio Joint Secretary, Labour, Government of Goa and also to the Assistant Labour Commissioner/ /Conciliation Officer, Ponda, Goa.

5. The parties hereto agree to file these terms of settlement in the Hon'ble Industrial Tribunal, Government of Goa, with a request to pass a consent award in terms of this settlement.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/1848

The following Award dated 14-1-1999 in Reference No. IT/63/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolkar, Ex-Officio Joint Secretary (Labour).

Panaji, 30th March, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/63/98

Kum. Leonora Gurgao,
Vasco-da-Gama, Goa. ... Workman/Party I

V/s

M/s Pereira Agencies Pvt. Ltd.,
Vasco-da-Gama, Goa. ... Employer/Party II

Workman-Party I represented by Adv. Shri P. B. Devari.

Employer-Party II - Exparte.

Panaji, dated: 14-1-1999

AWARD

In exercise of the powers conferred by clause (s) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15th July, 1998 bearing No. IRM/CON/VSC/ /(50)/98/9776 referred the following dispute for adjudication by this Tribunal.

(1) Whether the action of the management of M/s Pereira Agencies Pvt. Ltd., Vasco-da-Gama, Goa, in terminating the services of Miss Leonor Gurgao, with effect from 18-11-1996, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/63/98 and registered A/D notice was issued to the parties informing about the date of hearing fixed on 3-9-98 at 10.30 a.m. Both the parties were duly served with the registered A/D notice. On 3-9-98 Shri P. Goankar appeared on behalf of the workman-Party I and filed statement of claim at Exb.3. One Shri Balkrishna appeared on behalf of the employer II and the copy of the statement of claim was served on the him and the case was adjourned to 21-9-98 at 10.30 a.m. for verifying of the written statement by the employer-Party II. On 21-9-98 none appeared on the behalf of the employer-Party II and therefore last opportunity was given to the employer-Party II for filing the written statement on 13-10-98 at 10.30 a.m. However, on this date also none appeared on behalf of the employer-Party II and therefore the case was proceeded ex-parte against the employer-Party II.

3. The facts of the case in brief as pleaded by the workman-Party I (for short, "Workman") are that she was

working with the employer-Party II (for short, "employer") since the year 1993 and she was looking after the business activities of the employer. That she worked continuously with the employer without any break till 18-11-96. That by letter dated 19-11-96 the employer terminated her services without paying retrenchment compensation to her. That the employer also did not to her legal dues before the termination of her services and also did not hold any enquiry against her. That the last drawn salary of the workman was Rs. 1000/- per month and she is unemployed since the date of termination of her service. The workman contended that the termination of her service by the employer is illegal and unjustified and therefore she is entitled to be reinstated in service with full back wages.

4. In the present case the employer was given opportunities to file the written statement. However, the employer did not avail of this opportunity and allowed the case to proceed ex-parte. Consequently only the evidence of the workman is on record. The workman has examined herself and produced documents in support of her contention that termination of her service is illegal and unjustified. The workman in her deposition has stated that she was working with the employer as an Accounts Clerk since March 1993 and her salary was Rs. 1000/- p.m. She has stated that her services were terminated by the employer by letter dated 19-11-96 and at the time of termination of her service she was not given notice nor notice pay nor she was paid retrenchment compensation. She produced the letter dated 19-11-96 at Exb. W-1 issued by the employer to her stating that her services stood terminated with immediate effect. She has also produced the minutes of the conciliation proceedings held by the Asst. Labour Commissioner, Vasco-da-Gama, at Exb. W-2 and the failure report dated 6-5-98 at Exb. W-3.

5. The deposition of workman has gone unchallenged as the employer inspite of the opportunity given allowed the case proceed ex-parte. The letter dated 19-11-96 Exb. W-1 which is issued by the employer to the workman, proves that the workman was employed with the employer. From the said letter it can be seen that the services of the workman were terminated because she did not improve in her conduct inspite of the warnings given to her as regards her attendance and seriousness in her working. The said letter also stated that her services are terminated because she was disobeying the orders of the superiors, she was leaving office during working hours without intimation or without taking permission from her superiors and she had been keeping the work pending and incomplete which was assigned to her. Therefore from the above said letter it is clear that the services of the workman were terminated for misconduct and not for any other reason. The workman in her deposition has stated that she was not issued any warning or charge sheet at any time. There is no evidence on record to show that any warning or charge sheet was issued to the workman during the tenure of her service. The minutes of the conciliation proceedings Exb.W-2 as well as the failure report dated 6-5-98 Exb.W-3 show that the employer was given opportunity to participate in the conciliation proceedings but the employer did not do so. The employer was given opportunity to participate in the present proceedings. The employer filed an application dated 2-9-98 in this court seeking time to file the written statement and inspite of granting time the employer did not file the written statement nor participated in the proceedings. The employer had the opportunity to prove the allegations made against the workman in their letter dated 19-11-98, Exb. W-1, but the employer did not do so. The employer could have led evidence before this Tribunal to prove the acts of misconduct alleged against the workman. However, inspite of the opportunity given, the employer chose not to contest the proceedings and allowed the case to proceed ex-parte. Consequently there is no evidence from the employer to prove the misconduct against the workman. Since the misconduct is not proved, the termination of the services of the workman on the ground of misconduct becomes illegal and unjustified. It may be pointed out here that though the reference mentions the date of termination of service as 18-11-96, infact the date of termination of service is 19-11-96 as the letter dated 19-11-96 Exb.W-1 of the employer clearly states that the services of the workman are terminated with immediate effect. Also the failure report of the conciliation officer dated 6-5-98 mentions that the workman had made the complaint that her services were terminated from 19-11-98. It is therefore obvious that the date of termination of service is mentioned as 18-11-96 in the order of reference by mistake. It is a clerical mistake. I therefore hold that the services of the workman were terminated by the employer from 19-11-96 and the said termination is illegal and unjustified.

6. Once it is held that the termination is illegal and unjustified the next question is to what relief the workman is entitled. The normal rule is that in such a case the workman is entitled to reinstatement in service with full back wages unless there are reasons for not doing so. In

the present case I do not find any reason for deviating from this normal rule. There is no evidence on record which disentitles the workman reinstatement in service and full back wages. The workman in her statement has stated that she is unemployed from the date of termination of her service. There is no evidence to the contrary from the employer. Therefore it is just and proper to order reinstatement in service of the workman with full back wages. In the circumstances, I hold that the workman is entitled to be reinstated in service with full back wages and other consequential benefits.

Hence I pass the following order.

Order

It is hereby held that the action of the employer M/s Pereira Agencies Pvt. Ltd., Vasco-da-Gama, Goa, in terminating the services of the workman Miss Leonor Gurgao with effect from 19-11-96 is illegal and unjustified. The workman Miss Leonor Gurgao is ordered to be reinstated in service with full back wages and other consequential benefits.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

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